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Taxation—Intangible Property Tax on Corporate Stock—Status of Corporations Domesticated in Nebraska

An intangible property tax was assessed upon shares of stock held by plaintiff, executor, in four domesticated corporations. Plaintiff, in an action to enjoin the county treasurer from collecting the tax, contended that section 77-706¹ of the Nebraska Statutes, providing that intangible property taxes should be assessed against the corporation rather than its stockholders, applies to domesticated as well as domestic corporations, and, therefore, the shares should not be taxed to the stockholders. *Held*: by a divided court, the stock of a domesticated corporation is to be valued for taxation purposes as stock of a foreign

¹ Neb. Rev. Stat. § 77-706 (Reissue 1950) ("The corporation [organized under the laws of this state] shall pay the tax assessed upon its stock or shares, and shall have a lien thereon for the tax paid.").

corporation under the provisions of section 77-722,² therefore the tax is assessed against the individual stockholders.³

Subsequent to this decision, the Nebraska Legislature amended section 77-706 to provide that the intangible tax on shares of stock in domesticated corporations, as well as that in domestic corporations, should be assessed against the corporation rather than its stockholders.⁴ Therefore, the future effect of the instant decision is overruled. However, under a Nebraska statute,⁵ these stockholders will be liable for the amount of taxes which they should, under the instant ruling, have paid during the last three years.⁶

Where the stockholder is called upon to pay this back tax, if on the cash basis, he deducts this tax on his federal income tax return in the year paid. Where he is on the accrual basis, the tax was deductible in the year it became due, so the stockholder may have to file amended returns, claiming a refund, for those years which are still open.

The instant decision seems to result in double taxation since this tax on the shares of stock has already been assessed against the domesticated corporation, and these corporations will not be entitled to a refund because of statutory limitations.⁷ Collection of the tax from the individual stockholder also results in an unjust enrichment to the state. Although this result would not necessarily be unconstitutional,⁸ it seems the settled policy of Nebraska law to avoid double taxation.⁹ Because of the amendment, this is a problem only within the three year period of limitations.

In addition to the suggestion of a double taxation problem presented by the instant case, there is the question whether, after the amendment, any of Nebraska's corporate stock-taxation statutes may still be applied so that the state may tax the same property more than once.

² Neb. Rev. Stat. § 77-722 (Reissue 1950) ("If any foreign corporation is taxed in this state upon any tangible or intangible property, . . . the taxing officials of counties in which shares of stock of any such foreign corporation may be owned, shall determine . . . the value for assessment and taxation purposes of any such individual shares of stock in the hands of the resident owners.").

³ Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

⁴ L.B. 411, Neb. Legis., 65th Sess. (1953).

⁵ Neb. Rev. Stat. § 77-413 (Reissue 1950).

⁶ Estates in the process of administration, which own shares of stock in domesticated corporations, will be taxed for the preceding three years in the same manner that individuals are taxed. See Neb. Rev. Stat. § 77-318 (Reissue 1950).

⁷ Neb. Rev. Stat. §§ 77-1729, 77-1735 (Reissue 1950).

⁸ Citizens State Bank v. Board of Equalization, 110 Neb. 704, 194 N.W. 796 (1923).

⁹ Peters Trust Co. v. County of Douglas, 113 Neb. 596, 203 N.W. 1001 (1925); Nemaha County Bank v. County Board, 103 Neb. 53, 170 N.W. 500 (1918); First Trust Co. v. Lancaster County, 93 Neb. 792, 141 N.W. 1037 (1913).

No double taxation occurs in the assessment of shares of stock in a domestic or domesticated corporation with all of its property in the state. Before the corporation is taxed on the value of its shares, it is allowed to deduct the assessed value of property already taxed by the state from the value of its net worth.¹⁰ Nor is there any double taxation in the case of the foreign corporation which has no capital employed in the state. The tax is assessed against the resident stockholder.¹¹ Since the state has assessed no tax against the property of the corporation, it is not entitled to a deduction in arriving at the value of its shares.

The problem presented under these statutes is in the case where the corporation has only a part of its capital employed in this state. The domestic or domesticated corporation is allowed to deduct the assessed value of property in the state together with the actual value of property outside the state before the value of its shares is determined for taxation.¹² In determining the value of the foreign corporation's stock, only the assessed value of its property taxed in this state is allowed as a deduction.¹³

There is no double taxation since in both instances, before the shares are taxed, a deduction is allowed for the assessed value of the property in this state. However, discrimination is suggested by virtue of the fact that the Nebraska statutes allow the domestic and domesticated corporation to deduct the actual value of property outside the state from the net worth in arriving at the value of the shares of stock for taxation purposes, while this right is denied the foreign corporation.

It may, therefore be concluded that none of these current corporate stock taxation statutes violate the principal of Nebraska cases declaring double taxation to be contrary to the policy of this state. However, as to the three year period in which back taxes may be recovered under the ruling of the instant case, there would seem to be double taxation.

ROBERT S. HINDS, '55

¹⁰ L.B. 411, Neb. Legis., 65th Sess. (1953).

¹¹ Neb. Rev. Stat. § 77-713 (Reissue 1950).

¹² L.B. 411, Neb. Legis., 65th Sess. (1953).

¹³ Neb. Rev. Stat. § 77-722 (Reissue 1950).